

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35631]

Saratoga and North Creek Railway, LLC—Operation Exemption—Tahawus Line

Saratoga and North Creek Railway, LLC (Saratoga),¹ a Class III rail carrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to operate an approximately 29.71-mile line of railroad, known as the Tahawus Line.² The rail line extends between the existing connection with Saratoga at milepost NC 0.0 at North Creek

¹ Saratoga is a limited liability company, wholly owned by San Luis & Rio Grande Railroad (SLRG). SLRG is a Class III rail carrier and a subsidiary of Permian Basin Railways, Inc. (Permian), which in turn is owned by Iowa Pacific Holdings, LLC (IPH). IPH and Permian formed Saratoga for the purpose of operating the entire rail line running between Newcomb, N.Y., on the north and Saratoga Springs, N.Y., on the south, interchanging traffic with the Delaware & Hudson Railway Company, Inc. d/b/a Canadian Pacific (CP) at Saratoga Springs. In two previous proceedings, the Board authorized Saratoga to operate between Saratoga Springs and Corinth, N.Y., and then between Corinth and North Creek, N.Y. See Saratoga & N. Creek Ry.—Acquis. & Operation Exemption—Del. & Hudson Ry., FD 35500 (STB served June 1, 2011) and Saratoga & N. Creek Ry.—Operation Exemption—Warren Cnty., N.Y., FD 35500 (Sub-No. 1) (STB served June 1, 2011).

² Saratoga previously filed a notice of exemption to operate the Tahawus Line in October 2011. The notice of exemption was served and published in the Federal Register on November 10, 2011. See Saratoga & N. Creek Ry.—Operation Exemption—Tahawus Line, FD 35559 (STB served Nov. 10, 2011). In a decision served on November 23, 2011 (November Decision), the Acting Director of the Office of Proceedings rejected the notice before it became effective. An appeal was filed by Saratoga to the November Decision and the appeal was denied by the Board in a decision served on May 14, 2012 (May 2012 Decision). In the May 2012 decision, the Board stated that subsequent filings have provided sufficient evidence to resolve concerns that led to the notice being rejected, and that now a new notice of exemption may be filed by the railroad. As a result of the May 2012 Decision, this new notice of exemption is being filed.

and its terminus at milepost NC 29.71 at Newcomb. Saratoga states that it presently owns the line, which it had acquired from NL Industries, Inc. (NL) in 2011 as private track outside of the Board's regulatory jurisdiction under 49 U.S.C. §§ 10901-6.³ Saratoga intends to provide common carrier rail service over the subject line connecting to its existing trackage at North Creek and extending to its connection with CP at Saratoga Springs. Saratoga points out that there are no agreements applicable to the line imposing any interchange commitments.

Saratoga certifies that as a result of this transaction its projected annual revenues will not exceed \$5 million and will not result in Saratoga's becoming a Class I or Class II rail carrier.

Saratoga states that it intends to consummate the transaction at least 30 days from the filing date of the notice. The earliest this transaction can be consummated is June 16, 2012, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the

³ Saratoga states that the Board found in the May 2012 Decision that Saratoga did not need any Board authority to acquire this trackage as such property was outside the Board's jurisdiction. See B. Willis, C.P.A., Inc.—Petition for Declaratory Order, FD 34013 (STB served Oct. 3, 2001) (B. Willis), aff'd sub nom. B. Willis, C.P.A., Inc. v. STB, 51 Fed Appx. 321 (D.C. Cir. 2002) (private track is typically built and maintained by a shipper (or its contractors) to serve only that shipper, moving the shipper's own goods, so that there is no "holding out" to serve other shippers for compensation).

effectiveness of the exemption. Stay petitions must be filed no later than June 8, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35631, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John D. Heffner, Strasburger & Price, 1700 K Street, N.W., Suite 640, Washington, DC 20006.

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“WWW.STB.DOT.GOV.”

Decided: May 29, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.